

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

NAT LEVY,)	
)	
Plaintiff,)	
)	
vs.)	Case No. 4:05CV2403MLM
)	
DONALD J. OHL, WILLIAM J. KNAPP,)	
L. DAVID GREEN, and)	
MERILYN HAMLETT,)	
)	
Defendants.)	

ORDER

Before the court is the Motion for New Trial or for Reconsideration filed by Plaintiff Nat Levy, M.D. Doc. 28. Defendants filed a Reply. Doc. 31.

Previously in this matter Defendants filed Motions to Dismiss and Plaintiff filed a Motion to Strike Exhibits Attached to Defendants' Motions to Dismiss. In its Memorandum Opinion of March 13, 2006 this court found that the Exhibits attached to Defendants' Motions to Dismiss were properly considered pursuant to the Motions to Dismiss and that the court was not required to convert Defendants' Motions to Dismiss to motions for summary judgment in order to consider Defendants' Exhibits. Doc. 26. Upon reaching this conclusion the court relied upon case law which provides that "when considering a motion to dismiss a court may consider 'documents whose contents are alleged in a complaint and whose authenticity no party questions, but which are not physically attached to the pleadings.'" Doc. 26 at 3 (quoting Cohen v. Nw. Growth Corp., 385 F. Supp.2d 935, 966 (D.S.D. 2005) (internal quotations omitted). The court also relied upon Stahl v. United States Department of Agriculture, 327 F.3d 697, 700 (8th Cir. 2003) (holding that a court may take judicial

notice of public records and that the court has complete discretion to accept material beyond the pleadings when considering a Rule 12(b)(6) motion to dismiss. Doc. 26 at 2. Exhibits attached to Defendants' Motions to Dismiss included, among other things, Defendant Nat Trevor Levy, M.D.'s Responses to Plaintiff's Fourth Request to Admit in Cause No. 01CC3123, the Release and Settlement Agreement in Cause No. 01CC3123 executed between Defendant Hamlett and Missouri Baptist Medical Center, and the Joint Stipulation for Dismissal with Prejudice executed between Defendant Hamlett and the remaining defendants in Cause No. 01CC3123. Defendants also attached to their Reply in the matter under consideration the affidavit of Defendant Hamlett in which she attests to her signing the Release and Settlement Agreement and to the filing of the Voluntary Dismissal Memorandum with Regard to Defendant Nat Trevor Levy, M.D., in Cause No. 01CC3123.

Relying upon the date upon which the Release and Settlement was executed and, alternatively, upon the date Defendant Hamlett dismissed her medical malpractice action in Cause No. 01CC3123, this court concluded that Plaintiff's Complaint was filed after the expiration of the applicable 2-year statute of limitations. The court also concluded that neither the Dismissal of Cause No. 01CC3123 nor the Release and Settlement Agreement fell within the categories of circumstances under which Mo. Rev. Stat. § 516.230, Missouri's savings clause, is triggered. As such, the court granted Defendants' Motions to Dismiss.

In support of his Motion for New Trial or Reconsideration Plaintiff argues, among other things, that he did not attach the Release and Settlement to his Complaint; that he had no idea of its existence prior to January 2006; that, unlike the parties in Stahl, he does not admit the authenticity of the Release; and that his Response to Plaintiff's Request to Admit is not a public record of which the court can take notice.

The court notes that Plaintiff's claims that he was unaware of the existence of the Release and Settlement and that he was not a party to the Release and Settlement do not address the authenticity of this document. Rather, the affidavit of Defendant Hamlett sufficiently establishes the authenticity of the Release and Settlement. Additionally, Plaintiff has not stated grounds which would suggest that other Exhibits were improperly considered by the court. Having considered the arguments made by Plaintiff and for the reasons fully set forth in its Memorandum Opinion, the court finds that Plaintiff's Complaint was properly dismissed.

Accordingly,

IT IS HEREBY ORDERED that Plaintiff's Motion for New Trial or Reconsideration is **DENIED**. (Doc. 28).

/s/Mary Ann L. Medler

MARY ANN L. MEDLER

UNITED STATES MAGISTRATE JUDGE

Dated this 26th day of April, 2006.